And it is immaterial that the mortgage is unpaid. *Robertson* v. *Maxcey, supra.* Payment by means of commercial paper, if received by the creditor as such, is sufficient to entitle the surety to contribution. *Sloan* v. *Gibbes, supra; Pinkston* v. *Taliaferro,* 9 Ala. 547 (1846); *Ryan* v. *Krusor,* 76 Mo. App. 496 (1898); 1 BRANDT ON SURETYSHIP (2nd. ed.), § 285. And this is true even though such paper has not been paid by the surety giving it. *Smith* v. *Mason, supra; Stubbins* v. *Mitchell,* 82 Ky. 535, 6 Ky. Law Rep. 491 (1885); *contra, Brisendine* v. *Martin,* 23 N. C. 286 (1840). It would seem, therefore, that the instant case follows the minority view on this question. It is submitted that the majority view is based on sounder reason.

In Virginia the law seems well settled in regard to the main points stated above. *Pace* v. *Pace,* 95 Va. 792, 30 S. E. 361, 44 L. R. A. 459 (1898); *Conrad* v. *Smith,* 91 Va. 292, 21 S. E. 501 (1895); *Gordon* v. *Rixey,* 86 Va. 853, 11 S. E. 562 (1890); *Rosenbaum* v. *Goodman,* 78 Va. 121 (1883). And see article by E. C. Burks, 9 VA. LAW JOURN. 5 (1885).

RIGHT OF WOMEN TO SERVE AS JURORS—EFFECT OF NINETEENTH AMENDMENT UPON.—After the adoption of the Nineteenth Amendment to the Constitution of the United States, defendant, a white man, was convicted of murder in the first degree. He appealed on the ground that there were no women on the jury which tried him. The Constitution and laws of New Jersey are silent on the question of the eligibility of women for jury service. *Held,* women not eligible for jury duty; judgment affirmed. *State* v. *James* (N. J. Law), 114 Atl. 553 (1921).

Before the adoption of the Nineteenth Amendment it was well settled that the term "trial by jury" as used in the Constitution of the United States meant trial by such a jury as the common law recognized, viz., a jury composed of twelve men. *Commonwealth* v. *Dorsey,* 103 Mass. 412 (1869); *Capital Traction Co.* v. *Hof,* 174 U. S. 1 (1898). See 3 Bl. Com. 362. But this does not mean that the power of the legislature to alter the qualifications for jurors is in any way trammeled. On the other hand, it has been consistently held that the legislature has power to prescribe qualifications for jurors even though they may differ from the common law requisites above referred to. *People* v. *Harding,* 53 Mich. 481, 19 N. W. 155, 51 Am. Rep. 95 (1884); *People* v. *Barltz* (Mich.), 180 N. W. 423, 12 A. L. R. 520 (1920); See 24 Cyc. 187. For example, it is a proper exercise of legislative authority to authorize women to serve as jurors in the face of a constitutional provision that trial by jury shall remain inviolate. *Ex Parte Mana,* 178 Cal. 213, 172 Pac. 986, L. R. A. 1918E, 771 (1918).

But the precise point we are discussing is whether, without such change by the legislature, the amendment giving suffrage to women *ipso facto* qualifies them for jury service. Obviously this question is to be answered by determining whether or not the right to vote implies the right to serve as juror. The Wyoming Supreme Court has said in as many words that it does not. *McKinney* v. *State,* 3 Wyo. 719, 30 Pac. 293, 16 L. R. A. 710 (1892). In New York it has been held that there is no connection between suffrage and jury service, and that a

law requiring jurors to be male citizens does not violate a recent amendment to the State Constitution granting women the right to vote. To hold that such an amendment *ipso facto* gives women the right to serve as jurors would be to run counter to the long established idea that women are not entitled as citizens to act as jurors. *In re Grilli*, 179 N. Y. Supp. 795 (1920). Very recently the Supreme Judicial Court of Massachusetts has held that the Nineteeth Amendment does not qualify women as jurors but that legislation is required to do that. *In re Opinion of the Justices* (Mass.), 130 N. E. 685 (1921). This is the exact decision in the instant case.

On the other hand, very recently it has been held that the amendment does qualify women as jurors. But such a decision came from a State whose Constitution makes all citizens who are electors liable for jury service, the court holding that the purpose of the amendment was to abolish the distinction between men and women as electors. *People* v. *Barltz*, *supra* (1920). See *Parus* v. *District Court*, 42 Nev. 229, 174 Pac. 706, 4 A. L. R. 140 (1918); *Commonwealth* v. *Maxwell* (Pa.), 114 Atl. 825 (1921). At least one court, however, has denied this result on the ground that the amendment did not contemplate making women eligible for jury service since the public is so unalterably opposed to that. *Harland* v. *Territory*, 3 Wash. Terr. 131, 13 Pac. 453 (1887).

However the situation may be in States with such a constitutional provision as the one just mentioned, the decision in the instant case seems sound, viz., that the Nineteenth Amendment does not qualify women for jury service. Thus, until a statute grants them this right, they are no more qualified now than formerly, since the amendment has not altered their common law status except possibly in those States where all electors are liable for jury service. In keeping with the spirit of the times, however, as manifested by the amendment which gives women the ballot, statutes granting them the right to serve as jurors will likely be enacted in many of the States.

No Virginia case seems to have arisen on this question; but Section 5984 of the Code limits jurors to male citizens. It would seem, therefore, that the Legislature must qualify women to serve on juries before they may be called upon to perform this duty.

For discussion of principles involved, see 6 VA. LAW REV. 589.